

The Commonwealth of Massachusetts
Public Employee Retirement Administration Commission
John W. McCormack Building, Room 1101
One Ashburton Place Boston, MA 02108
(617) 727-9380

MEMORANDUM

TO: All Retirement Boards

FROM: Robert F. Stalnaker, Executive Director

RE: Repeal of G.L. c. 32, § 16(2)

DATE: July 23, 1997

As you may be aware G.L. c. 32, § 16(2) was repealed by section 19 of chapter 306 of the acts of 1996. The effective date of chapter 306 was November 7, 1996. Question has since arisen as to whether the provisions of section 16(2) are still applicable to members who are removed or discharged from their positions after the effective date of chapter 306.

Prior to its repeal, section 16(2) provided in full as follows:

The removal or discharge of any member in service classified in Group 1, Group 2 or Group 4 who has attained age fifty-five and has completed fifteen or more years of creditable service, or any member so classified who has not attained age fifty-five but who has completed twenty or more years of creditable service, or any such member who is a veteran and has completed ten or more years of creditable service, shall not become effective unless and until a written notice thereof containing a fair summary of the facts upon which such action was based has been filed with the board. The procedure set forth in subdivision (1) relative to delivery of copies, statement of service thereof, notice, hearing if requested, and the filing of a certificate of findings and decision, so far as applicable, shall apply to all proceedings involving such removal or discharge. Unless the board shall find that

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such removal or discharge was justified, such member shall forthwith be restored to his office or position without loss of compensation.

It is the opinion of the Commission that the provisions of section 16(2) are no longer in force or effect for any members of the retirement systems and that such members are no longer entitled to a hearing before their retirement board upon their removal or discharge from office. In repealing this section of the law, the legislature has expressed its intention that the provisions of section 16(2) did not represent a retirement benefit and were, thus, not part of the contractual rights to which members are entitled.

This section has been repealed. In the absence of a decision of an administrative tribunal or court to the contrary, we cannot conclude that retirement boards must continue to adhere to the provisions of a section of the law which has been determined to be outside the area of responsibility of the retirement systems.

For the foregoing reasons, we must conclude that the provisions of G.L. c. 32, § 16(2) no longer pertain and may no longer be followed by retirement boards.

/sjk

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